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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/307,511 05/07/99 BOURDON

G PELMD-51494

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EXAMINER

SRIVASTAVA, V

ART UNIT

PAPER NUMBER

3761

DATE MAILED:

06/06/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No. 09/307,511	Applicant(s) BOURDON, GUY	
	Examiner Virendra K Srivastava	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16 - 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16 - 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 08/793,956.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- |   |  |
|---|--|
| 15) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 16) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)              | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>7</u> . | 20) <input type="checkbox"/> Other:  |

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## **DETAILED ACTION**

### ***Priority***

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been filed in parent Application No. 08/793,956, filed on 3/12/97.

Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) a translation of the foreign application should be submitted under 37 CFR 1.55 in reply to this action.

### ***Specification***

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 16, 17, 20, 21, 23, 24 and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Weismann et al (Pat. # 5,647,351).

With respect to claims 16 and 21, note Weismann et al teach breathing aid device (1) as illustrated in figure 1, comprising:

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a patient connection (10);

an inspiratory branch (3) and a valve (15);

an expiratory branch (4);

means for controlling expiration (5);

means for detecting pressure (11);

means for ventilating is a pressure gas source including means for controlling inspiration valve and expiration valve and pressure adjusting means accordingly as disclosed in col. 4, lines (19 – 26); and

means for regulating a patient's breathed volume as disclosed in col. 4, lines (7 – 19) and lines (27 – 47).

With respect to claim 17, note the teaching in col. 4, line (64).

With respect to claims 20, 23 and 25, note the teaching in col. 2, lines (33 – 45) and col. 4, lines (7 – 26).

With respect to claim 24, note the breathing aid device comprising”

a patient connection (10);

an inspiratory branch (3) and a valve (15);

an expiratory branch (4) and a valve (5);

a pressure detector (11);

a source of breathable gas (30);

a valve controller (15);

a pressure controller, transducer (14);

a control unit, as taught in col. 4, lines (7 – 8); and

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a measuring unit, circuit (8).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weismann et al as applied to claims 16 and 25 above, and further in view of Sullivan et al (Pat. # 5,522,382).

With respect to claim 18, note Weismann et al disclose the breathing aid device substantially as claimed including a breathing mask in general. Weismann et al is silent about the nose mask, but Sullivan et al teach a nose mask (12). It would have been obvious to one of ordinary skill in the art to have provided a nose mask instead of face mask as taught by Sullivan et al in order to provide exhalation outside the mask.

With respect to claims 19 and 22, note the motor (20) as disclosed in col. 14, lines (6 – 8).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note the teaching of Castor et al (Pat. # 5,743,253) and Berthon-Jones (Pat. # 5,704,345).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virendra K Srivastava whose telephone number is (703) 308-0959. The examiner can normally be reached on 8.30 AM to 6.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the patent analyst whose telephone number is (703) 305-3001.

A handwritten signature in black ink, appearing to read "Virendra K Srivastava". The signature is fluid and cursive, with a long horizontal stroke at the end.

vs  
April 28, 2001